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<sup>o</sup>MEMBER N.Y. BAR ONLY

April 14, 2008

JAMES D. CECCHI 1933-1995

**VIA HAND DELIVERY AND ELECTRONIC FILING**

Honorable Dennis M. Cavanaugh, U.S.D.J.  
United States District Court, District of New Jersey  
United States Post Office & Courthouse  
Newark, New Jersey 07102

Re: In re Vytarin/Zetia Marketing, Sales Practices  
and Products Liability Litigation  
MDL No. 1938

Dear Judge Cavanaugh:

This firm, along with others, represent various plaintiffs in several of the actions pending before Your Honor encompassed by the above litigation which has been transferred to this Court by the Judicial Panel for Multidistrict Litigation (hereinafter the "Panel"). A copy of the Panel's Order is annexed hereto as Exhibit A. For the reasons set forth below, we believe that this important and complex Multidistrict litigation would benefit from early case-management by both yourself and Magistrate Judge Falk.

By last count, there are approximately twenty (20) actions pending before Your Honor which raise essentially the same claims against defendants Schering Plough and Merck relating to defendants' blockbuster anti-cholesterol drug Vytarin. The claims, by both consumers and third-party payers, include civil RICO, consumer fraud and unjust enrichment, among others. Plaintiffs in all cases allege that defendants concealed adverse test results relating to Vytarin's effectiveness while simultaneously trumpeting the drug's alleged superiority over cheaper generic and proven alternative medicines.

Honorable Dennis M. Cavanaugh, U.S.D.J.  
April 14, 2007  
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In addition to the actions pending before Your Honor, there is one related case pending before Judge Pisano, and approximately 100 related actions pending throughout the country which are subject to transfer to Your Honor pursuant to the Panel's Order.

The cases before the Court raise issues of national significance, both as a consequence of the seriousness of the allegations made in the numerous complaints already on file, as well as the known magnitude of the Class and damages at issue. As such, we feel that it is essential to establish uniform initial protocols for monitoring and administering this case. Toward that end, we respectfully submit that it would be productive to schedule an initial preliminary case-management conference as soon as practicable, in conformity with the Manual for Complex Litigation, Fourth §10.11 ("The judge should hold an initial pretrial conference under Rule 16 as soon as practicable...even if some parties have not yet appeared or even been served.") We will be prepared to discuss all aspects of the case at the conference, as well appropriate interim orders to insure the orderly progress of this significant matter, also consistent with the Manual's prescriptions. Id.

Thank you for Your Honor's attention. I will call Your Honor's deputy clerk later today to inquire as to whether your schedule will permit the scheduling of conference in the near future.

Respectfully submitted,

CARELLA, BYRNE, BAIN, GILFILLAN,  
CECCHI, STEWART & OLSTEIN



JAMES E. CECCHI

JEC

cc: Honorable Mark Falk, U.S.M.J. (Via ECF and Regular Mail)  
All Counsel (Via email)

#343642

# **EXHIBIT A**

UNITED STATES  
JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

**UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION**

**Apr 08, 2008**  
**FILED**  
**CLERK'S OFFICE**

**IN RE: VYTORIN/ZETIA MARKETING, SALES  
PRACTICES AND PRODUCTS LIABILITY  
LITIGATION**

MDL No. 1938

**TRANSFER ORDER**

**Before the entire Panel<sup>\*</sup>:** Plaintiffs in eleven actions have submitted five motions,<sup>1</sup> pursuant to 28 U.S.C. § 1407, for centralization of a total of 33 actions. No responding party opposes centralization, but there is disagreement over the selection of a transferee forum. Moving and responding plaintiffs variously support centralization in the following districts: the Northern District of California, the District of Colorado, the Middle District of Florida, the Eastern District of Louisiana, the District of Minnesota, the Southern District of Mississippi, the Eastern or Western District of Missouri, the District of New Jersey, the Southern District of New York, or the Northern District of Ohio. Responding defendants<sup>2</sup> support centralization in the District of New Jersey.

This litigation currently consists of 33 actions listed on Schedule A and pending in seventeen districts as follows: twelve actions in the District of New Jersey, three actions in the Northern District of California, two actions each in the District of Kansas, the Northern District of Mississippi, the Southern District of New York, and the Northern District of Ohio, and one action each in the Eastern District of California, the District of Colorado, the Middle District of Florida, the Southern District of Florida, the Eastern District of Louisiana, the District of Minnesota, the Eastern District of New York, the Southern District of Ohio, the Eastern District of Pennsylvania, and the District of Puerto Rico.<sup>3</sup>

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<sup>\*</sup> Judges Heyburn, Motz and Scirica did not participate in the disposition of this matter.

<sup>1</sup> Although additional submissions styled as "motions" were submitted to the Panel, they were docketed as responses in accordance with Panel Rule 7.2(h). *See* Rule 7.2(h), R.P.J.P.M.L., 199 F.R.D. 425, 434 (2001).

<sup>2</sup> Merck/Schering-Plough Pharmaceuticals; Merck & Co., Inc. (Merck); Schering-Plough Corp. (Schering-Plough); Schering Corp.; Schering-Plough Biopharma; Schering-Plough Healthcare Products, Inc.; Schering-Plough Healthcare Products Sales Corp.; Merck Sharp & Dohme (Italia) S.P.A.; MSP Singapore Co., LLC; and MSP Technology Singapore PTE, Ltd.

<sup>3</sup> In addition to the 33 actions now before the Panel, the parties have notified the Panel of 67 related actions pending in various districts across the country. These actions and any other related actions

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On the basis of the papers filed and hearing session held, we find that these 33 actions involve common questions of fact, and that centralization under Section 1407 in the District of New Jersey will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. All actions share factual questions concerning allegations relating to the use and/or marketing of the drugs Vytorin and/or Zetia. Centralization under Section 1407 will eliminate duplicative discovery; prevent inconsistent pretrial rulings, including those with respect to certification of class actions; and conserve the resources of the parties, their counsel and the judiciary.

We are persuaded that the District of New Jersey is an appropriate transferee forum for this litigation. Because Merck and Schering-Plough have their corporate headquarters within the District of New Jersey, relevant discovery may be found there. In addition, transfer to this district enjoys the support of defendants and several plaintiffs.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the District of New Jersey are transferred to the District of New Jersey and, with the consent of that court, assigned to the Honorable Dennis M. Cavanaugh for coordinated or consolidated pretrial proceedings with the actions pending there and listed on Schedule A.

PANEL ON MULTIDISTRICT LITIGATION



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D. Lowell Jensen  
Acting Chairman

John G. Heyburn II, Chairman\*  
Robert L. Miller, Jr.  
David R. Hansen

J. Frederick Motz\*  
Kathryn H. Vratil  
Anthony J. Scirica\*

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will be treated as potential tag-along actions. *See* Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

**IN RE: VYTORIN/ZETIA MARKETING, SALES  
PRACTICES AND PRODUCTS LIABILITY  
LITIGATION**

MDL No. 1938

**SCHEDULE A**

Eastern District of California

George Artenstein v. Merck & Co., Inc., et al., C.A. No. 2:08-152

Northern District of California

Richard Haskin v. Merck & Co., Inc., et al., C.A. No. 3:08-376

ASEA/AFSCME Local 52 Health Benefits Trust, et al. v. Merck & Co., Inc., et al.,  
C.A. No. 3:08-531

Helen Aronis v. Merck & Co., Inc., et al., C.A. No. 4:08-352

District of Colorado

Ronna Dee Kitsmiller, et al. v. Merck & Co., Inc., et al., C.A. No. 1:08-120

Middle District of Florida

Marion J. Greene v. Merck & Co., Inc., et al., C.A. No. 3:08-69

Southern District of Florida

Sam A. Ciotti v. Merck & Co., Inc., et al., C.A. No. 0:08-60077

District of Kansas

Charles Swanson, et al. v. Merck & Co., Inc., et al., C.A. No. 2:08-2040

John P. Dudley v. Merck & Co., Inc., et al., C.A. No. 6:08-1027

Eastern District of Louisiana

RoseAnn S. Flores v. Merck & Co., Inc., et al., C.A. No. 2:08-674

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**MDL No. 1938 Schedule A (Continued)**

District of Minnesota

Jody Fischer v. Merck & Co., Inc., et al., C.A. No. 0:08-203

Northern District of Mississippi

Susan McCulley v. Merck & Co., Inc., et al., C.A. No. 2:08-16

Lisa Mims v. Merck & Co., Inc., et al., C.A. No. 4:08-10

District of New Jersey

Rita Polk v. Schering-Plough Corp., et al., C.A. No. 2:08-285

Jay Klitzner v. Schering-Plough Corp., et al., C.A. No. 2:08-316

Sandra Weiss v. Schering-Plough Corp., et al., C.A. No. 2:08-320

Lionel Galperin v. Merck & Co., Inc., et al., C.A. No. 2:08-349

Robert J. McGarry v. Merck & Co., Inc., et al., C.A. No. 2:08-350

Charles D. Maurer, et al. v. Schering-Plough Corp., et al., C.A. No. 2:08-393

Daniel A. Brown v. Merck & Co., Inc., et al., C.A. No. 2:08-395

Steven Knight v. Merck & Co., Inc., et al., C.A. No. 2:08-396

Ken W. Bever v. Schering-Plough Corp., et al., C.A. No. 2:08-430

David DeAngelis v. Schering-Plough Corp., et al., C.A. No. 2:08-431

Ciro Verdi, et al. v. Schering-Plough Corp., et al., C.A. No. 2:08-432

Marilyn Woodman v. Schering-Plough Corp., et al., C.A. No. 2:08-437

Eastern District of New York

Sigmond Tomaszewski v. Merck & Co., Inc., et al., C.A. No. 1:08-258

Southern District of New York

Joyce B. Rheingold, et al. v. Merck & Co., Inc., et al., C.A. No. 1:08-438

Stanley Levy, et al. v. Merck & Co., Inc., et al., C.A. No. 1:08-491

Northern District of Ohio

Theodore Sahley v. Merck & Co., Inc., et al., C.A. No. 1:08-153

Panayiotis Balaouras v. Merck & Co., Inc., et al., C.A. No. 1:08-198

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**MDL No. 1938 Schedule A (Continued)**

Southern District of Ohio

Dennis Kean v. Merck & Co., Inc., et al., C.A. No. 2:08-61

Eastern District of Pennsylvania

Fred Singer v. Merck & Co., Inc., et al., C.A. No. 2:08-331

District of Puerto Rico

Alexis Alicea-Figueroa, et al. v. Merck & Co., Inc., et al., C.A. No. 3:08-1099